

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
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6 IN RE: NATIONAL : MDL NO. 2804
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8 THIS DOCUMENT RELATES TO : CASE NO.
9 ALL CASES : 1:17-MD-2804
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5 Testimony of: CHRISTOPHER ZIMMERMAN
6 By Mr. Pifko 11
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9 E X H I B I T S
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| 12 | Zimmerman | PowerPoint entitled | 44 |
| 13 | V2-1 | "Regulatory Compliance Update Meeting of the Board of Directors August 14 10, 2017," Bates stamped ABDCMDL00273425 | |
| 15 | Zimmerman | Email chain, top one dated | 52 |
| 16 | V2-2 | 16 Sep 2014, Bates stamped ABDCMDL00277299 through ABDCMDL00277301 | |
| 17 | Zimmerman | FY14 Performance | 59 |
| 18 | V2-3 | Evaluation Form for Chris Zimmerman, Bates stamped ABDCMDL00383869 through ABDCMDL00383874 | |
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1 THE VIDEOGRAPHER: We're now on
2 the record. My name is David Lane,
3 videographer for Golkow Litigation
4 Services. Today's date is February 8,
5 2019. Our time is 1:44 p.m.

10 Our deponent today is Chris
11 Zimmerman. Counsel will be noted on the
12 stenographic record.

13 Our court reporter today is Ann
14 Marie Mitchell and will now swear in our
15 witness.

16 — — —

20 — — —

21 EXAMINATION

23 BY MR. BIEKO:

24 Q Good afternoon, Mr. Zimmerman.

1 My name is Mark Pifko. We met some months ago
2 when I deposed you before.

3 Do you recall?

4 A. Yes, I do.

5 Q. Okay. So the court reporter has
6 just placed you under oath. It's the same oath
7 you took when you were deposed before.

8 Understood?

9 A. Yes.

10 Q. Okay. And that means that if
11 you're untruthful or intentionally misleading or
12 dishonest in some way, you could be subject to
13 penalties from the court.

14 Do you understand that?

15 A. Yes.

16 Q. Do you intend to provide truthful
17 and accurate testimony today?

18 A. I do.

19 Q. Are you undergoing any medical
20 treatment or suffering from any condition that
21 would inhibit your ability to provide truthful
22 and accurate testimony today?

23 A. No.

24 Q. Is there any reason that you can

1 state as far as why this deposition should not go
2 forward?

3 A. No.

4 Q. All right. The -- 2007
5 AmerisourceBergen entered into a settlement
6 agreement with the DEA. Correct?

7 A. Yes.

8 Q. And prior to that, there was an
9 order to show cause that was sent to
10 AmerisourceBergen. Correct?

11 A. Correct.

12 Q. And you're familiar with the
13 order to show cause?

14 A. I know we got an order to show
15 cause, yes.

16 Q. Okay. You were the top person
17 with respect to diversion control at the time.
18 Correct?

19 A. I was in charge of regulatory --
20 corporate security and regulatory affairs is the
21 department I was responsible for.

22 Q. But diversion control was under
23 your authority. Correct?

24 A. That aspect would be one of the

1 aspects under my control, yes.

2 Q. And to this day, it's still --

3 diversion control is something that's underneath
4 your purview. Correct?

5 A. Correct.

6 Q. And you're the top person with
7 respect to diversion control issues. Correct?

8 A. I'm the top person in charge of
9 that department that diversion control reports up
10 to, yes.

11 Q. I understand you have other
12 responsibilities as well. Correct?

13 A. Yes. I have dedicated people
14 underneath me responsible for diversion control
15 as well.

16 Q. So you are familiar with the
17 order to show cause that was sent to
18 AmerisourceBergen at that time. Correct?

19 A. At that time, we had an order to
20 show cause, yes.

21 Q. Do you have an understanding
22 about what specifically it was that led the DEA
23 to suspend the registration of the Orlando
24 facility?

1 MR. NICHOLAS: Object to the
2 form.

3 THE WITNESS: The -- my
4 recollection, it had to do -- the order
5 to show cause had to do with distribution
6 of controlled substances and I believe
7 possibly to an internet pharmacy. I'm
8 not -- I don't recall specifically.

9 BY MR. PIFKO:

10 Q. Okay. What I'm trying to get at,
11 though, is I understand you're -- well, I
12 shouldn't assume that.

13 What I'm trying to get at is,
14 what specifically did the DEA contend that
15 AmerisourceBergen did wrong that led it to
16 suspend the registration of the Orlando facility?

17 MR. NICHOLAS: Object to the
18 form.

19 THE WITNESS: I would need to --
20 I don't recall exactly what was written
21 in the order to show cause from 11 years
22 ago. If I saw the document, I could
23 refresh my memory.

24 BY MR. PIFKO:

1 Q. One of the things that -- after
2 the suspension order, AmerisourceBergen as part
3 of the settlement agreement with the DEA
4 undertook some changes to its diversion control
5 policies and procedures. Correct?

6 A. We made some enhancements and
7 changes to the program. Correct.

8 Q. Okay.

9 A. At the request of DEA.

10 Q. One of those changes was the
11 initiation of a process by which
12 AmerisourceBergen would not ship an order that it
13 had deemed to be suspicious. Correct?

14 A. That was part of the settlement
15 agreement, yes.

16 Q. Okay. That was not something the
17 company was doing prior to that settlement
18 agreement. Correct?

19 A. Correct.

20 Q. Are you aware that -- do you know
21 who David May is?

22 A. Yes.

23 Q. He's someone who works for you.
24 Correct?

1 A. Correct.

2 Q. He had a lengthy history with the
3 DEA. Correct? Prior to joining
4 AmerisourceBergen?

5 A. Correct.

6 Q. Are you aware that he was deposed
7 in this case as well?

8 A. Yes.

9 Q. The day after your first
10 deposition?

11 A. Yes.

12 Q. And he served as a 30(b)(6) for
13 the company. Correct?

14 A. I believe so. For a certain time
15 period.

16 Q. Okay, right. So you served as a
17 30(b)(6) for certain issues, and he did as well.
18 Correct?

19 A. Correct.

20 Q. And the distinction between you
21 was that he provided testimony from a time period
22 more recently than you did. Correct?

23 A. Correct.

24 Q. Do you remember the time period

1 of which you were designated?

2 A. I don't know when it started. I
3 mean, I have been with the company a long time.
4 But I think it was up till 2014 was my time
5 period.

6 Q. So Mr. May covered those same
7 topics but with respect to the time period 2015
8 going forward. Correct?

9 A. That's my understanding.

10 MR. NICHOLAS: Object to the
11 form.

12 And just I will remind everyone
13 for the record that today Mr. Zimmerman
14 is testifying as a fact witness, not as a
15 30(b)(6) witness, pursuant to Special
16 Master Cohen's order.

17 BY MR. PIFKO:

18 Q. Are you aware that Mr. May
19 testified that under the Controlled Substances
20 Act there is a, what we call the shipping
21 requirement, which is a requirement that if you
22 identify an order as suspicious, you cannot ship
23 it --

24 MR. NICHOLAS: Object to the

1 form.

2 BY MR. PIFKO:

3 Q. -- unless you've performed the
4 requisite due diligence to clear the order?

5 MR. NICHOLAS: Object to the
6 form, mischaracterizes the testimony

7 Go ahead.

10 BY MR. PIFKO:

11 Q. Okay. Well, I'll represent to
12 you that he testified that there is a shipping
13 requirement under the Controlled Substances Act.

14 I'd like to know if you believe
15 that there is a controlled -- a shipping
16 requirement under the Controlled Substances Act.

17 MR. NICHOLAS: Object to the
18 form, mischaracterizes the testimony.

19 Go ahead.

20 THE WITNESS: My understanding of
21 the regulation is that we have a
22 responsibility to report suspicious
23 orders. I have not seen any inference or
24 reference to a shipping requirement

1 within the regulations.

2 BY MR. PIFKO:

3 Q. Do you have any way to explain
4 why Mr. May would say there is a shipping
5 requirement and you would say there's not?

6 MR. NICHOLAS: Object to the
7 form, mischaracterizes the testimony.

8 Go ahead.

9 THE WITNESS: I don't know. I
10 can't speak for Mr. May.

11 BY MR. PIFKO:

12 Q. So if Mr. May said that, would
13 you believe he's just wrong?

14 MR. NICHOLAS: Object to the
15 form.

16 THE WITNESS: I don't know the
17 context or -- of his statement. And
18 when he referred -- I don't -- I can't
19 answer that question.

20 BY MR. PIFKO:

21 Q. I believe one of the things we
22 talked about when you were deposed before was the
23 Masters Pharmaceutical decision from the DC
24 Circuit.

1 Do you recall discussing that?

2 MR. NICHOLAS: Object to the
3 form.

4 Go ahead.

8 BY MR. PIFKO:

9 Q. And you have some familiarity
10 with that decision. Correct?

11 A. A little, yes.

12 Q. You understand, as we discussed
13 in your deposition, that the case says that
14 there's something called a shipping requirement.
15 Correct?

16 MR. NICHOLAS: Object to the
17 form, mischaracterizes his testimony,
18 calls for a legal analysis. He's a fact
19 witness.

20 THE WITNESS: I don't know that.

21 BY MR. PIFKO:

22 Q. Okay. So sitting here today, you
23 have no explanation for why Mr. May would say
24 there was a shipping requirement, but you don't

1 contend that there is?

2 MR. NICHOLAS: Object to the
3 form, mischaracterizes the testimony,
4 asked and answered, bickering.

5 THE WITNESS: I don't know what
6 the context of the discussion that you
7 and Mr. May had and with him to --
8 whatever comment he made, if he did. But
9 my answer is, I'm not aware of the
10 shipping requirement as stipulated in the
11 federal regulations.

12 BY MR. PIFKO:

13 Q. If there is no requirement that
14 you not ship an order that's deemed to be
15 suspicious, why would the company have agreed to
16 undertake such a requirement?

17 A. Because that was part of our
18 negotiations in order to get our registration
19 reinstated, was to implement a program that
20 halted orders that we deemed to be suspicious.

21 Q. Why would you have to agree to
22 something that's not in the regulations?

23 MR. NICHOLAS: Object to the
24 form.

1 THE WITNESS: It was the
2 negotiation. That's what we agreed upon.

3 BY MR. PIFKO:

4 Q. It was something that the DEA
5 asked you to agree to?

6 A. Yes.

7 Q. Did you tell the DEA they were
8 wrong?

9 MR. NICHOLAS: Object to the
10 form.

18 BY MR. PIFKO:

19 Q. Were you one of the people who
20 was negotiating the settlement agreement with the
21 DEA?

22 A Yes

23 Q. And did you ever tell the DEA
24 that you felt that wasn't a requirement under the

1 law that they were asking you to do, to halt the
2 shipment of orders that you had identified as
3 suspicious?

4 MR. NICHOLAS: Object to the
5 form.

6 THE WITNESS: Yes.

7 BY MR. PIFKO:

8 Q. You did tell them that you
9 thought that was wrong?

10 A. During the negotiations, yes.

11 Q. Okay. What specifically did you
12 tell them?

13 A. I told them that our requirement
14 is to report suspicious orders, and the way we've
15 been doing it for the previous 17 years was to
16 report after the fact. And that has been the way
17 we've been doing it for 17 years. We negotiated
18 with DEA with the program in '98, which they were
19 well aware that we were shipping the products --
20 we were reporting them after we ship the
21 products, and that was approved by DEA.

22 So my previous negotiations with
23 DEA, what the regulations state, there's no --
24 nowhere that I could find that says you can't

1 ship an order that has been reported as
2 suspicious. In fact, it's the way it's been
3 done.

4 This was a change in the
5 industry. No one else was stopping orders. We
6 had never done it in the past. So again, that
7 was my understanding.

8 So in the negotiation process, I
9 said, this is the way we've been doing it. This
10 has been approved by DEA in the past. It's been
11 inspected by DEA. Our -- DEA audits our
12 distribution centers. And in all of our audits,
13 they've never once said that you're not supposed
14 to ship an order that you deem to be suspicious.
15 So my -- that was my response into the
16 negotiation was, I don't agree with that.

17 Q. And what was their response when
18 you said that?

19 MR. NICHOLAS: Object to the
20 form.

21 THE WITNESS: I mean, do you want
22 to go back and forth through the
23 negotiations or -- I mean...

24 BY MR. PIFKO:

1 Q. Well, I want you to tell me what
2 they said in response to you saying that to them.

3 MR. NICHOLAS: Same objection.

4 THE WITNESS: They disagreed at
5 that time.

6 BY MR. PIFKO:

7 Q. What did they say was the basis
8 for their disagreement?

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: They wanted that
12 order not to be shipped if it's deemed to
13 be suspicious. I mean, that's what they
14 said.

15 BY MR. PIFKO:

16 Q. They didn't tell you why?

17 A. No.

18 Q. And you just ended up agreeing to
19 it?

20 MR. NICHOLAS: Object to the
21 form.

22 THE WITNESS: In order to -- as
23 part of the negotiation, that was an area
24 that we agreed upon in order to get our

1 license reinstated in Orlando, yes.

2 BY MR. PIFKO:

3 Q. Did you agree to anything
4 specific related to internet pharmacies in the
5 settlement agreement in order to get your license
6 back or lift -- the suspension lifted at the
7 Orlando facility?

8 A. I don't recall.

9 Q. You don't believe there was
10 anything specific to internet pharmacies in the
11 settlement agreement?

12 A. I don't -- I don't recall.

13 Q. Okay. The changes that you made
14 in response to the settlement agreement with --
15 that were made as a result of the suspension of
16 the Orlando facility, those were systemic
17 companywide changes. Correct?

18 MR. NICHOLAS: Object to the
19 form.

20 Go ahead.

21 THE WITNESS: Yes. Part of the
22 negotiation was that, even though it was
23 the Orlando distribution center's license
24 that was suspended, that they wanted us

1 to implement a program for all of our
2 drug company distribution centers.

3 BY MR. PIFKO:

4 Q. They wanted you to make changes
5 companywide. Correct?

6 A. They wanted us to implement the
7 program companywide, correct.

8 Q. And that's what you did.
9 Correct?

10 A. Yes.

11 Q. And the programs that you
12 implemented, those weren't specific to internet
13 pharmacies. Correct?

14 A. The program was -- regardless of
15 an internet pharmacy or not, I mean, if we
16 identified an order that we deemed to be
17 suspicious, we would not ship it and report it to
18 DEA. So it was an internet pharmacy, that would
19 apply.

20 And then we have an additional
21 due diligence process that was also negotiated --
22 negotiated on the front end as well.

23 Q. But that was for a broad array of
24 customer types. Correct?

1 A. Yeah, all retail pharmacies. All
2 pharmacies licensed as retail pharmacies.

3 Q. And the due diligence requirement
4 you're saying that you -- didn't apply, however,
5 to chain pharmacies. Correct?

6 MR. NICHOLAS: Object to the
7 form.

8 THE WITNESS: Part of our
9 negotiations was identifying the program
10 and what was -- what aspects it would
11 cover, would it include hospitals,
12 Department of Defense. Chains were
13 discussed. And part of the negotiation
14 was that it was determined that a chain
15 of ten or more stores would not be
16 included in the due diligence process,
17 still in the order monitoring process.

18 BY MR. PIFKO:

19 Q. This implementation of a shipping
20 requirement or an agreement not to ship an order
21 that had been identified as suspicious, that
22 applied regardless of the customer type.

23 Correct?

24 A. Correct.

1 Q. For all customers of

2 AmerisourceBergen. Correct?

3 A. Correct.

4 Q. I'm handing you what was -- you
5 said something -- before I get to that.

6 You said something earlier that
7 this shipping requirement wasn't anything anyone
8 else was doing.

9 Do you recall saying that a few
10 minutes ago?

11 A. I wasn't aware of any of the
12 other companies that were stopping orders that
13 they deemed to be suspicious.

14 Q. Okay. And how do you know that
15 no one else was doing that?

16 MR. NICHOLAS: Object to the
17 form.

18 THE WITNESS: Because after
19 the -- once we -- once we implemented our
20 new program, we were the only ones that
21 were halting orders that we deemed to be
22 suspicious.

23 BY MR. PIFKO:

24 Q. Did you review the diversion

1 control policies and practices of every other
2 distributor?

3 A. No, I did not.

4 Q. So you don't really know if
5 that's true or not?

6 A. I -- only from -- through
7 discussions.

8 Q. Discussions with whom?

9 A. My counterparts.

10 Q. Which counterparts?

11 A. The other distribution companies.

12 Q. Which companies?

13 A. Cardinal, McKesson, some of the
14 smaller ones -- you know, it was at a HDA meeting
15 where I did a presentation. There was
16 discussions at that meeting.

17 Q. When was that?

18 A. 2007, I think. 2007, I believe.

19 The end of 2007.

20 Q. So at the end of 2007, you
21 participated in an HDA meeting with other
22 distributors, and you discussed who was -- had a
23 shipping requirement and who didn't?

24 MR. NICHOLAS: Object to the

1 form.

2 THE WITNESS: Let me clarify.

3 It was a DEA conference in 2007.

4 It wasn't a HDA conference. It was a DEA
5 conference. Sorry about that.

6 BY MR. PIFKO:

7 Q. So regardless of the type of
8 conference, you had a discussion with other
9 distributors at the end of 2007 about diversion
10 control issues, which included whether they were
11 implementing a shipping requirement?

12 A. I did a presentation on our
13 program that had a requirement to not ship orders
14 that we deemed to be suspicious, and they were
15 present at the meeting.

16 Q. And they told you that that
17 wasn't a requirement that any of them had?

18 A. I don't recall that being a
19 specific statement. I don't remember the
20 word-for-word conversation, but there was
21 conversations about that process and whether it's
22 legal and what the regulations imply, you know.
23 Just general conversation.

24 Q. As part of this conference or on

1 the side after the conference?

2 MR. NICHOLAS: Object to the
3 form.

4 THE WITNESS: I don't recall if
5 there was a question and answer, if it
6 came up during the question and answer or
7 if it was immediately after or in between
8 sessions. I don't recall.

9 BY MR. PIFKO:

10 Q. Do you recall any specific people
11 with whom you had that discussion?

12 A. No.

13 Q. Do you recall any specific
14 companies with whom you may have had that
15 discussion?

16 A. It wasn't like a point of
17 discussion. It was common discussions about the
18 requirement of -- you know, the regulations did
19 not indicate that you have to stop orders
20 before -- if you deemed them suspicious. And
21 then, you know, our program had that and what was
22 the basis upon our decision to do that.

23 Q. And what did you tell them?

24 A. It was in our negotiation with

1 DEA.

2 Q. What did they tell you about
3 whether that wasn't required?

4 MR. NICHOLAS: I'm going to
5 object to the form.

6 THE WITNESS: I think -- I mean,
7 their -- again, that was the discussion.

8 It wasn't a long, lengthy debate. I
9 mean, we had our program in place, and
10 that was our program. I was explaining
11 what our program was.

12 BY MR. PIFKO:

13 Q. Other than that discussion, did
14 you have any other discussions with anyone about
15 whether other companies had a shipping
16 requirement?

17 A. I don't recall.

18 Q. So sitting here today, that's the
19 only such discussion that you recall as to
20 whether other companies had a shipping
21 requirement?

22 A. No. There was a lot of
23 discussions. I mean, through our organization,
24 HDA, we would meet and discuss regulatory

1 requirements and processes.

2 Q. You participated regularly in HDA
3 meetings regarding DEA regulatory requirements
4 and diversion issues?

5 MR. NICHOLAS: Object to the
6 form.

7 THE WITNESS: I had -- and I'm
8 not sure what time frame you're talking
9 about, but I've been -- worked with HDA,
10 NWD and HDMA, all the different names
11 prior to that, throughout my career,
12 which consists of meetings, meetings with
13 DEA, meetings with HDA, joint meetings.
14 And discussions are about regulatory
15 requirements.

16 BY MR. PIFKO:

17 Q. Through meetings with the HDA,
18 you had discussions with other distributors about
19 regulatory requirements?

20 MR. NICHOLAS: Object to the
21 form.

22 THE WITNESS: We would have
23 discussions about general -- well, either
24 new regulatory requirements that were

1 being proposed, whether it's in the state
2 or the government, existing
3 interpretation of the requirements, but
4 that would be something that we would
5 talk about.

6 BY MR. PIFKO:

7 Q. And one of the things you
8 discussed was the shipping requirement?

9 MR. NICHOLAS: Object to the
10 form.

15 Our requirement was that we did not ship
16 an order that we deemed to be suspicious.

17 And I would have probably had that
18 discussion after we implemented the
19 program.

20 BY MR. PIFKO:

21 Q. Before you implemented the
22 program, did you ever have a discussion with
23 other distributors about whether there was a
24 shipping requirement?

1 A. No, not that I can recall.

2 Q. And so after you implemented that
3 under the settlement agreement, you believe that
4 you discussed the shipping requirement with other
5 distributors at the HDA meetings. Correct?

6 MR. NICHOLAS: Object to the
7 form, asked and answered.

8 THE WITNESS: I had a
9 presentation at the DEA conference where
10 I explained our program, which included
11 not shipping orders that we deemed to be
12 suspicious. And we've had -- we had
13 discussions at HDA meetings. I, you
14 know, can't point to how many times or
15 the specific conversation, but we would
16 have discussed that.

17 BY MR. PIFKO:

18 Q. What was the nature of the
19 discussions about the shipping requirement at HDA
20 meetings that you recall?

21 MR. NICHOLAS: Object to the
22 form.

23 THE WITNESS: I mean, that's
24 pretty much -- there's not much

1 discussion. Either you ship it or you
2 don't. We don't ship orders that we deem
3 to be suspicious. That's the extent of
4 the discussion.

5 BY MR. PIFKO:

6 Q. And other companies told you that
7 they did?

8 MR. NICHOLAS: Object to the
9 form.

10 THE WITNESS: I don't know if
11 they ever said they did. I just know
12 what we did. And my conversation was
13 what ABC was doing and that was our
14 program.

15 BY MR. PIFKO:

16 Q. And did they ever say, why you're
17 doing that, we don't agree that's a requirement?

18 MR. NICHOLAS: Asked and
19 answered.

20 THE WITNESS: I don't know
21 exactly if that's how the conversation
22 went, but I'm sure there was questions of
23 people of why you're changing your
24 practices that you've been -- had in

1 place for the past 17 years.

2 BY MR. PIFKO:

3 Q. Did anyone ever say you should
4 fight that, it's not a requirement under the law?

5 A. I don't recall that discussion.

6 Q. So to your knowledge, no one ever
7 said that?

8 MR. NICHOLAS: Object to the
9 form.

10 THE WITNESS: I -- again, not
11 that I recall.

12 BY MR. PIFKO:

13 Q. Any other way that you believe
14 you would know whether all -- other distributors
15 didn't have that requirement?

16 MR. NICHOLAS: Object to the
17 form.

18 THE WITNESS: No, not that I can
19 think of.

20 BY MR. PIFKO:

21 Q. So this DEA meeting and
22 discussions you had at the HDA are the only such
23 discussions?

24 A. Can you ask me that question?

1 Because I want to make sure I understand the
2 question on the table.

3 Q. Yeah. I'm just trying to --
4 that's what we do at depositions.

5 A. Yeah.

6 Q. You said that no one else had a
7 requirement of -- that they would not ship an
8 order that they deemed to be suspicious. And I'm
9 trying to understand the basis for your saying
10 that.

11 MR. NICHOLAS: Object to the
12 form. I think you're mischaracterizing
13 the testimony.

14 THE WITNESS: As I explained,
15 that prior to our implementing the
16 program that stopped orders to be
17 suspicious, the practice had always been
18 that you report suspicious orders -- you
19 have to have a system to report
20 suspicious orders. That reporting was
21 always after the order was shipped.

22 You know, you're asking me, did I
23 have discussions in 1990, in '91, '92. I
24 don't -- I'm sure I probably did. '95,

1 2000, 2004, possibly. So that was the
2 general knowledge of the program when I
3 started with the company in 1990 until
4 2007 when they said that we wanted you to
5 implement a new process to where you
6 don't ship it.

7 Prior to that, my negotiations
8 with DEA, working on a suspicious order
9 program, it never even came up in the
10 conversation. DEA never mentioned a
11 shipping requirement or stopping the
12 order. We tested it for two years with
13 multiple DEA offices in the field, went
14 to Washington, DC, and Washington, DC
15 said, we approve your program. There was
16 no mention of shipping requirements, no
17 mention of stopping orders.

18 So that was my belief, my
19 understanding. If DEA -- if there was --
20 if DEA thought that there should be a
21 shipping requirement, I thought they
22 would have brought that in the
23 negotiations in the '90s when we're
24 devising the program. They would have

1 said, hey, Cardinal, McKesson, they're
2 stopping the orders, why don't you guys
3 enter that into your system. Never came
4 into the discussion.

5 And again, this was a two-year
6 process. This isn't, you know, hey, can
7 we do this.

8 And so never a shipping
9 requirement was mentioned. We get to
10 2007. We have an immediate suspension.
11 We come down there, and they put on the
12 table, we want you to stop orders that we
13 deem to be suspicious. And my first
14 response is, where is that in the
15 regulations and why wasn't that ever
16 brought up in 1998 through our
17 negotiation, why hasn't it ever been
18 mentioned in the DEA audit, why isn't
19 it -- we've never had discussions about
20 that. So --

21 BY MR. PIFKO:

22 Q. What did they say in response to
23 that question?

24 MR. NICHOLAS: Let him finish.

7 Now, you know, that was the
8 agreement we went in the negotiations,
9 and that was what we implemented after
10 that. We did, ABC.

11 BY MR. PIFKO:

12 Q. When you said this was never
13 brought up before, what did they say about that?

14 A. This is what we want to do now.

15 They didn't say anything about that.

16 Q. When you said this wasn't a
17 requirement in the regulations, what did they say
18 in response to that?

19 A. They didn't say anything.

20 Q. When you say that you got a
21 system approved in Washington, when was that

22 A. 1998. I believe.

23 Q. And who specifically approved
24 that?

1 A. The chief of the diversion unit
2 at DEA.

3 Q. Do you have a name?

4 A. Pat Good.

5 Q. Was --

6 A. I believe Pat Good was the chief
7 at the time.

8 Q. That was something that was in
9 writing?

10 A. Yes.

11 Q. I'm going to hand you what was
12 marked in your deposition before, but I think
13 there might have been some redactions, so I'm
14 going to remark it.

15 — — —

16 (Deposition Exhibit No. Zimmerman
17 V2-1, PowerPoint entitled "Regulatory
18 Compliance Update Meeting of the Board of
19 Directors August 10, 2017," Bates stamped
20 ABDCMDL00273425, was marked for
21 identification.)

22 — — —

23 BY MR. PIFKO:
24 Q. As Zimmerman Volume 2, Number 1.

1 A. Thank you.

2 Q. For the record, this is a
3 document Bates labeled ABDCMDL00273425. And it
4 was produced natively, so it's the same Bates
5 number on every page.

6 MR. MAHADY: Can we go off the
7 record for one second?

8 Can I talk to you outside real
9 quick?

10 MR. PIFKO: Sure.

11 THE VIDEOGRAPHER: Going off the
12 record, 2:12 p.m.

13 - - -

14 (A discussion off the record
15 occurred.)

16 - - -

17 THE VIDEOGRAPHER: Back on record
18 at 2:13 p.m.

19 BY MR. PIFKO:

20 Q. Okay. So I just want to ask you
21 about a specific page on this document that we
22 had to get a court order to be able to ask you
23 about this after your deposition, or to have
24 access to this part of the document.

1 So if you want to turn to page 16
2 of the PowerPoint, there's numbers on the left
3 corner.

4 MR. NICHOLAS: I'll object to the
5 commentary, but I will ask -- I'm not
6 going to say he has to read the whole
7 thing again, but let him at least flip
8 through it to refamiliarize himself with
9 the document.

10 BY MR. PIFKO:

11 Q. Take your time. I just want to
12 ask you about something in the comments on the
13 page that has slide 16 on it.

15 Okay.

16 Q. There's a part here that's in
17 color in red on the document.

19 A. I am.

20 Q. Okay. So it says here, "We are
21 trying to make the best decisions we can to
22 protect the public while assuring legit customers
23 get their meds -- that is all the diversion
24 control function is concerned with."

1 Do you see that?

2 A. I see that.

3 Q. Do you agree with that statement?

4 MR. NICHOLAS: Object to the
5 form.

6 THE WITNESS: I don't know who
7 wrote this or what the inference is to,
8 but the general -- the general assumption
9 that we want to make sure we have
10 medications available for those that need
11 them, I agree with. And we have
12 processes in place to, you know, secure
13 the supply chain, I agree with that. But
14 I don't know who wrote it. I'm not sure
15 what the context is.

16 BY MR. PIFKO:

17 Q. Okay. But what about the part
18 about part of the diversion control function
19 being that you -- while you want to protect the
20 public while also assuring that customers get
21 their medicines, do you agree about that part of
22 it?

23 MR. NICHOLAS: Object to the
24 form

1 Go ahead.

2 THE WITNESS: Again, our
3 diversion control program is just one
4 facet of our regulatory program and our
5 CS array of security to protect the
6 company in making sure that the
7 medications that we buy are legitimate,
8 are stored and distributed appropriately,
9 and are available to the pharmacies when
10 they place an order. And that is how our
11 process works.

12 I don't know the person who
13 stated that and what they meant by that,
14 but that's how we ensure the integrity of
15 the supply chain, ensuring that patients
16 have medicines that's available to them
17 that are written by doctors and that
18 those medications have been stored and
19 distributed safely to a licensed
20 pharmacy.

21 BY MR. PIFKO:

22 Q. Okay. All I'm trying to ask you,
23 though, is in part of carrying out those duties,
24 if you believe that part of the idea of

1 preventing diversion is to help protect the
2 public from the consequences of a controlled
3 substance that gets diverted.

4 MR. NICHOLAS: Object to the
5 form.

6 Go ahead.

7 THE WITNESS: And I know we spoke
8 this -- about this last time. It depends
9 how that drug is diverted. And again,
10 our role in the supply chain that adds
11 protections to the public is to ensure
12 that the medications are available and
13 they have been stored and safely
14 distributed to a licensed dispenser.

15 That is our obligation, and that is how
16 our program is built.

17 BY MR. PIFKO:

18 Q. Okay. When you say safely
19 distributed --

20 MR. NICHOLAS: Let him finish.

21 THE WITNESS: Safely distributed
22 to a dispenser, a licensed location.

23 BY MR. PIFKO:

24 Q. Right. So when you say safely

1 distributed, what do you mean, safely
2 distributed?

3 A. Make sure that the transportation
4 companies that we use have been background
5 checked and that the product has been stored
6 appropriately and is delivered to the pharmacy
7 where the pharmacist signs for the product.

8 Q. Right. Because you don't want a
9 substance to be diverted from legitimate medical
10 channels. Correct?

11 A. Not while it's under our
12 distribution license. Right? So when we -- as
13 soon as we receive the product, it's under our
14 control. And the way the federal regulations are
15 written, we're responsible to make sure we have
16 the adequate recordkeeping, storage requirements,
17 select drivers, ensure that the pharmacies are
18 appropriately licensed. And so in that -- from
19 the time we sign for it till the time the
20 pharmacy signs for it, we want to make sure that
21 product is not diverted. Correct.

22 Q. And you understand that these are
23 substances that have a high potential for abuse
24 that you're distributing. Correct?

1 MR. NICHOLAS: Object to the
2 form.

3 THE WITNESS: We distribute
4 all -- all medications, over the counter.
5 A small subset of the product that we
6 sell and distribute are controlled
7 substances, and a smaller subset are
8 Schedule II, which have a higher
9 potential for abuse. Correct.

10 BY MR. PIFKO:

11 Q. Okay. Well, Schedule II
12 substances have a high potential for abuse.
13 Agree?

14 A. Correct.

15 Q. And when you distribute those,
16 you want to make sure they don't get into the
17 wrong hands so that they're abused. Correct?

18 A. We want to make sure all of our
19 product that we sell doesn't get in the wrong
20 hands.

21 Q. But that includes Schedule II
22 controlled substances?

23 A. We want to make sure we sell to
24 licensed pharmacies. Correct. We have an

1 obligation to make sure we only sell to licensed
2 entities.

3 - - -

4 (Deposition Exhibit No. Zimmerman
5 V2-2, Email chain, top one dated 16 Sep
6 2014, Bates stamped ABDCMDL00277299
7 through ABDCMDL00277301, was marked for
8 identification.)

9 - - -

10 BY MR. PIFKO:

11 Q. I'm handing you what's marked as
12 Zimmerman Volume 2, Exhibit 2.

13 A. Thank you.

14 Q. For the record, it's a
15 couple-page email, Bates labeled ABDCMDL00277299
16 through 301.

17 Take a moment to review that.

18 Let me know when you're done.

19 A. (Reviewing document.)

20 Okay.

21 Q. Okay. I want to turn your
22 attention to -- well, have you seen this before?

23 A. My name is on it. I don't
24 specifically recall.

1 Q. This is an email that -- a
2 portion of which you wrote. Correct?

3 A. Yes.

4 Q. It says in the middle of the
5 first page, there's an email from you dated
6 September 16, 2014 to Rita Norton, Anne Oswalt,
7 copying Steve Mays and David May. The subject is
8 "Update."

9 Do you see that?

10 A. Uh-huh.

11 Q. Do you agree this is an email you
12 wrote?

13 A. It appears to be, yes.

14 Q. I want to direct your attention
15 to language that starts on the bottom of the
16 first page and continues onto the second page.

17 You say, "Doesn't the dispensing
18 of any controlled substance come with the
19 foreseeable risk of adverse health consequences
20 or misuse of the controlled substances?"

21 Do you see that?

22 MR. NICHOLAS: I'm sorry, where
23 are you?

24 THE WITNESS: Yeah, where are

1 you?

2 BY MR. PIFKO:

3 Q. You can look at the screen in
4 front of you to help you, too.

5 A. Oh.

6 MR. NICHOLAS: I see. Yep.

7 THE WITNESS: Yes, I see that.

8 BY MR. PIFKO:

9 Q. You said that. Correct?

10 A. It appears I wrote that, yes.

11 Q. And you say -- you then say,

12 "Dispensed" -- on the second page, "Dispensed
13 controlled substances have the 'foreseeable risk'
14 of: being given to a family member that they
15 were not originally prescribed for (husband,
16 wife, et cetera); removed from the medicine
17 cabinet by a family member or friend; the patient
18 can become addicted to the prescribed drug;
19 stolen; et cetera; all of which are foreseeable
20 and could have the adverse health consequences or
21 death due to the abuse or misuse of the
22 controlled substances."

23 Do you see that?

24 A. Yes.

1 Q. You said that. Correct?

2 A. That's what I wrote.

3 Q. What was the basis for saying
4 that at the time?

5 MR. NICHOLAS: Object to the
6 form.

7 THE WITNESS: I think the basis
8 of the comment was that we have no
9 control -- all these things I indicate,
10 we have no control over that. We
11 distribute to the licensed individuals,
12 but there's -- the risk is -- you know,
13 how the doctor prescribes it, if they
14 don't describe it -- prescribe it
15 appropriately, if the pharmacy isn't
16 monitoring it, if the patient doesn't
17 monitor it appropriately, if somebody has
18 it in their medicine cabinet and somebody
19 steals it, there's inherent risk to that
20 product. That's why it's important that
21 everybody follows the regulatory
22 requirements.

23 We have our requirements that
24 have nothing to do -- I'm just pointing

1 out a fact that these medications have
2 that has nothing to do with how we handle
3 our regulatory responsibilities within
4 the supply channel.

5 BY MR. PIFKO:

6 Q. Okay. But you agree that these
7 are all foreseeable risks with the controlled
8 substance. Correct?

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: I believe that's
12 probably -- again, I shouldn't say
13 probably, but that's why they're a
14 controlled substance.

15 BY MR. PIFKO:

16 Q. Right. Because all these things
17 are potential consequences. I mean, you're
18 saying it's obviously foreseeable, is what you're
19 saying.

20 MR. NICHOLAS: Object to the
21 form.

22 THE WITNESS: Not obviously
23 foreseeable. I'm stating that there's a
24 reason why we store them in vaults and we

1 have specific recordkeeping requirements,
2 because of their potential for abuse.

3 BY MR. PIFKO:

4 Q. And all --

5 A. Which implies that these
6 products, that if somebody dispenses a Schedule
7 II product, somebody is going to die because
8 they're going to misuse it or it's going to get
9 stolen, I don't agree with that.

10 Q. Well, if there's a -- it's a
11 foreseeable risk, though, that all the these
12 things could happen. That's exactly what you
13 said.

14 A. They could happen.

15 Q. I want to ask you about the New
16 Jersey United States Attorney investigation.

17 Are you familiar with that?

18 A. In what context?

19 Q. You're aware that there was a
20 criminal investigation of the company being
21 conducted by the United States Attorney.

22 Correct?

23 A. I'm under -- yes. I have that
24 understanding, that there was an investigation by

1 the US Attorney's Office. Correct.

2 Q. That was a stressful situation
3 for you?

4 A. It's a situation that I have to
5 deal with. Correct.

The figure consists of a 15x15 grid of black bars on a white background. The bars are of uniform width and height. Most cells in the grid are empty. The filled cells are distributed in a non-repeating, scattered pattern. Some cells are single bars, while others are pairs of bars side-by-side. The overall pattern is irregular and lacks a clear, repeating structure.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 BY MR. PIFKO:

7 Q. Specific -- I'm not saying that
8 you haven't had other stressful times in your
9 life and there's not -- many causes of stress.

10 All I'm asking is that dealing
11 with that United States Attorney's investigation
12 was a stressful situation for you.

13 Would you agree?

14 MR. NICHOLAS: Same objection.

15 Same objection.

16 THE WITNESS: I mean, it was --
17 there was some stress involved, but I
18 mean, it wasn't, you know -- again, it
19 wasn't anything -- anything different
20 than my regular course of work.

21 - - -

22 (Deposition Exhibit No. Zimmerman
23 V2-3, FY14 Performance Evaluation Form
24 for Chris Zimmerman, Bates stamped

1 ABDCMDL00383869 through ABDCMDL00383874,
2 was marked for identification.)

3 - - -

4 BY MR. PIFKO:

5 Q. Handing you what's marked as
6 Zimmerman Volume 2, Exhibit 3.

7 A. Thank you.

8 Q. For the record, it's an
9 eight-page document, Bates labeled
10 ABDCMDL00383869 through 76.

11 And I just wanted to direct your
12 attention to page 6 of 8, which is the page that
13 has the Bates numbers 383874. And there's a
14 section there that says, "Comments by John Chou,"
15 if you see that?

16 MR. NICHOLAS: Just for the
17 record, if you want to flip through the
18 entire document, you can. I'm not saying
19 read it, the whole thing, but familiarize
20 yourself, you can certainly do that.

21 THE WITNESS: Okay.

22 (Reviewing document.)

23 BY MR. PIFKO:

24 Q. And it says specifically --

1 MR. NICHOLAS: Let him --

2 MR. PIFKO: I just want to tell
3 him what I want him to look at. He can
4 look at whatever he wants, but I just
5 want to tell him --

6 MR. NICHOLAS: Let him tell you
7 he's ready.

8 MR. PIFKO: -- what I'm
9 interested in.

10 MR. NICHOLAS: Yeah. You can
11 tell him -- he can tell you when he's
12 ready.

13 BY MR. PIFKO:

14 Q. Specifically I want you to focus
15 your attention on a specific section here, it
16 says, "This was a year in which he and his team
17 were dealing with significant stress from being
18 under the magnifying glass environment created by
19 the ongoing investigation of ABC's diversion
20 control program by the US Attorney's Office in
21 New Jersey."

22 MR. NICHOLAS: Can we at least
23 say the year? Let him flip through --

24 BY MR. PIFKO:

1 Q. This is a 2014 evaluation of you.

2 All I want to ask is if you agree that was a
3 stressful situation, as this comment says here.

4 That's all I'm asking you.

5 You can see the section is up on
6 the page, on the screen in front of you as well.

7 I'm just asking if that -- if you
8 agree with that statement.

9 A. There was stress. I don't agree
10 entirely. I mean, if you look at the previous
11 page with my comments, I don't indicate that I
12 was stressed regarding the New Jersey -- I
13 stressed it was challenging, because a lot of the
14 things that we did during that year, opening up
15 new facilities, bringing on, you know, another
16 company, 100 percent increase in network costs,
17 there was a lot, tremendous amount of work.

18 So there was maybe additional
19 stress. To say -- I know John states here that
20 to the New Jersey -- I don't know if I completely
21 agree with that.

22 Q. Okay. Who is John?

23 A. John Chou is my boss.

24 Q. Okay. It says -- what's his

1 title?

2 A. He's general counsel.

3 Q. Well, what was the New Jersey
4 United States Attorney's investigation about, do
5 you know?

6 MR. NICHOLAS: Hold on.

7 I'll -- A, I'll object to the
8 form. B, to the extent the knowledge you
9 have about the New Jersey investigation
10 is derived from conversations with or
11 communications with counsel, I'm
12 instructing you not to answer.

13 THE WITNESS: All my
14 communications regarding New Jersey was
15 with counsel.

16 BY MR. PIFKO:

17 Q. Did Steve Mays ever call you
18 about the New Jersey United States Attorney's
19 investigation?

20 A. In what context?

21 Q. To tell you about it.

22 A. We received a subpoena. And, you
23 know, and we forwarded it on to legal. But I'm
24 not sure how that -- how the mechanics -- the

1 mechanics work, whether -- how that process came
2 about, but, I mean, there was -- everyone knew
3 there was a subpoena that we received from New
4 Jersey.

5 Q. So you heard from Steve Mays that
6 there was a subpoena from the United States
7 Attorney's Office in New Jersey?

8 A. I don't know if I even -- I don't
9 know who -- if I heard from Steve -- I don't know
10 who I heard it from. And I don't know if it came
11 in the mail. Again, I can't recall. It's
12 several years ago and how -- whether it started
13 with the subpoena or whether it was a phone call,
14 whether there was a meeting, but I know there was
15 some entry point contact with CSRA before we
16 moved it to the legal department. I'm not sure
17 of the mechanics of that.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The figure consists of a 12x12 grid of black bars. Each bar is a horizontal rectangle with a thin white border. The length of each bar is unique, both within its row and across all columns. The bars are arranged in a staggered pattern, with each bar's position relative to the others being distinct. The overall effect is a complex, abstract visual pattern of varying lengths and positions.

16 Q. So you don't know other than
17 counsel telling you what the investigation is
18 about?

19 A. Is that -- what's the question?

20 Q. My question is, you don't know
21 what the investigation is about, other than
22 counsel telling you?

23 A. All my -- yes, with my
24 discussions with counsel. Correct.

1 Q. Did you produce any documents in
2 response to the subpoena?

3 A. I'm sure we did. I mean, if they
4 requested information, we would have pulled that
5 together, yeah.

6 Q. Do you know what documents were
7 requested in the subpoena?

8 MR. NICHOLAS: I'm going to
9 reiterate my instruction that if this --
10 the answer to this question necessitates
11 your relaying or knowing information
12 communicated to you through counsel, then
13 I instruct you not to answer.

14 THE WITNESS: Correct. I don't.

15 BY MR. PIFKO:

16 Q. You don't know what documents
17 were requested?

18 A. You were asking me -- I don't
19 recall what was. And I'll -- what I -- you know,
20 there was discussions with legal. I can't recall
21 what exactly it was.

22 Q. Well, you said that Steve Mays
23 also talked to you about the subpoena as well?

24 A. I don't know if Steve talked to

1 me. I can't recall how -- again, as I stated
2 before, I don't know if we received a call from
3 DEA or the US Attorney's Office or a subpoena
4 came to the mail. I don't remember the mechanics
5 of when we initially found out.

6 Q. Did you ever see the subpoena
7 yourself?

8 A. I don't recall.

9 Q. You don't know either way?

10 A. I don't know either way. I don't
11 recall if I saw the subpoena or not.

12 Q. Did you spend a lot of time
13 dealing with the subpoena?

14 A. Again, my conversations and
15 actions were all done under the direction of
16 counsel.

17 Q. Okay. That's not my question,
18 though. You got to answer my question.

19 I asked you if you spent a lot of
20 time dealing with the subpoena.

21 MR. NICHOLAS: Object to the
22 form.

23 THE WITNESS: So it was a long,
24 drawn-out process. So, you know, I

1 don't -- I mean, it was years, years of
2 process. So again, I'm not sure how to
3 gauge that, whether it's -- your question
4 is, did we produce a lot. I don't know
5 if over five years, I would -- a lot,
6 yes, I assume we did.

7 BY MR. PIFKO:

8 Q. Okay.

9 A. I can't tell you exactly what all
10 was produced, but, you know, that would all be
11 through the legal department.

12 Q. So it's your testimony that you
13 dealt with the nature of this investigation over
14 the course of five years?

15 A. I don't --

16 MR. NICHOLAS: Object to the
17 form.

18 Go ahead.

19 THE WITNESS: I don't know the
20 course. It initiated I believe in 2012,
21 and that's what I know.

22 BY MR. PIFKO:

23 Q. And when -- is it closed, to your
24 knowledge?

1 A. I don't know.

2 Q. Are you still dealing with it?

3 MR. NICHOLAS: Object to the
4 form.

5 THE WITNESS: In what -- in what
6 way?

7 BY MR. PIFKO:

8 Q. You told me that you thought
9 you've been dealing with it for five years. I
10 mean, we have your performance evaluation here
11 that says it was a very stressful situation for
12 you to be dealing with it.

13 I'm just asking how much time you
14 dealt with it, how long the process was. I mean,
15 it's obviously something significant, so I want
16 to hear when you last dealt with it, was it
17 something you were dealing with every day?

18 MR. NICHOLAS: Object to the
19 form.

20 You can answer, but only if it
21 doesn't get into attorney communications.

22 THE WITNESS: Yeah. I wouldn't
23 feel comfortable answering that question.

24 BY MR. PIFKO:

1 Q. I am not asking you the substance
2 of the discussions. I'm asking you the amount of
3 time you spent. You need to answer that
4 question.

5 MR. NICHOLAS: If you know.

6 Object to the form.

7 MR. PIFKO: Stop "if you know,"
8 Bob. Stop.

9 MR. NICHOLAS: It's the first
10 time I've said it all day, Mark.

11 MR. PIFKO: Stop.

12 MR. NICHOLAS: Don't say --

13 MR. PIFKO: You've got a problem
14 with coaching witnesses. Okay? You need
15 to stop. I'm done with it. You say that
16 one more time, we're going -- we're going
17 to be done.

18 MR. NICHOLAS: Good. Go ahead.

19 MR. PIFKO: I'm going to bring
20 him back again. Okay?

21 MR. NICHOLAS: Just --

22 MR. PIFKO: We're going to go
23 this over and over again.

24 MR. NICHOLAS: Ask your -- you're

1 badgering the witness.

2 MR. PIFKO: No, I'm not. You're
3 trying to -- you coached him into not
4 answering this question. He knows all
5 about this thing. He just testified that
6 he dealt with it for five years, and
7 you're trying to get him to avoid talking
8 about it.

12 MR. PIFKO: And we're not killing
13 this time.

14 MR. NICHOLAS: Ask him your --

15 MR. PIFKO: We're not killing
16 this time you're interrupting for the
17 record. Okay?

18 MR. NICHOLAS: I don't care if
19 you count this time or not. I don't care
20 if you count these 30 seconds or not. Go
21 ahead and ask your question.

22 MR. PIFKO: Okay.

23 BY MR. PIFKO:

24 Q. Sir, I'm trying to get an

1 accurate answer from you. Okay?

2 I understand that your counsel is
3 instructing you not to talk about the substance
4 of discussions you had with counsel. I'm not
5 asking you about that. Okay?

6 I just want to know how much time
7 in your day over the course of years that this
8 was going on that you were dealing with this.

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: Some days it would
12 be an entire day. It may go two months
13 without any time. It may be three days
14 at a time, then it may go months
15 without -- again, you're asking me to
16 give you an answer over a five-year
17 period of how much time I worked on it.

18 I can't -- if -- I don't know.

19 BY MR. PIFKO:

20 Q. That's all the kind of answer I'm
21 looking at.

22 So you believe it was roughly a
23 five-year period --

24 A. I just --

1 Q. -- and that's about the rough
2 time periods in any particular day that you might
3 have dealt with it?

4 MR. NICHOLAS: Object to the
5 form.

6 THE WITNESS: I threw out five
7 years. I don't even -- I don't know the
8 investigation's closed. I don't know the
9 current status. It started in 2012. I
10 haven't done much in the last, you know,
11 bit. So I don't -- I don't know.

12 BY MR. PIFKO:

13 Q. When was the last time you recall
14 having significant involvement with it?

15 A. It's been a while. I don't -- I
16 wouldn't feel comfortable picking a date.

17 Q. More than a year?

18 A. I don't think it's been -- I
19 don't think it's that long. I don't know.

20 Q. So sometime less than a year was
21 the last time you had significant involvement?

22 MR. NICHOLAS: Object to the
23 form.

24 THE WITNESS: It could have been

1 a year, it could have been six months.

2 Again, my time -- I may -- I don't know.

3 I don't know. It wasn't last week or

4 last month, I know that.

5 BY MR. PIFKO:

6 Q. Okay. But it's 2019 right now.

7 A. It wasn't 2019.

8 Q. So the last time you had

9 significant involvement was in 2019?

10 A. No, no, no. It was not in 2019.

11 Q. Okay. It was sometime in 2018?

12 MR. NICHOLAS: Object to the

13 form.

14 THE WITNESS: Again, I don't know

15 exactly.

16 BY MR. PIFKO:

17 Q. Roughly, I'm just asking you.

18 MR. NICHOLAS: Object to the

19 form.

20 THE WITNESS: I can't answer that

21 question. I don't know what you're

22 considering considerable time. And I

23 can't -- is considerable time five hours,

24 five days, five months?

7 BY MR. PIFKO:

8 Q. And you're --

9 A. But I'm just saying, what's a
10 significant amount of time.

11 Q. In your understanding of the word
12 "significant," when was the last time that you
13 had a meaningful day where you dealt with the New
14 Jersey US Attorney's investigation?

15 MR. NICHOLAS: Object to the
16 form.

17 THE WITNESS: It's been a while.

18 BY MR. PIFKO:

19 Q. Okay.

20 A. It's been a while, more than a
21 year.

22 Q. But less than two years?

23 MR. NICHOLAS: Object to the
24 form.

1 THE WITNESS: Now, I can't --

2 now -- you got me more than a year. I
3 don't know.

4 BY MR. PIFKO:

5 Q. I'm just trying to get an
6 estimate. Okay?

7 A. I'm being completely honest with
8 you.

9 Q. Okay.

10 A. I don't know --

11 Q. Okay. Fair enough.

12 A. -- if it was a year, 14 months,
13 16 months. I don't know.

14 MR. PIFKO: Okay. We're going to
15 take a short break.

16 THE VIDEOGRAPHER: Going off the
17 record, 2:42 p.m.

19 (A recess was taken from
20 2:42 p.m. to 2:57 p.m.)

22 THE VIDEOGRAPHER: Back on
23 record 2:57 p.m.

24 BY MR PTEKO:

1 Q. Welcome back.

2 A. Yeah.

3 Q. AmerisourceBergen for a lengthy
4 period of time had thresholds as a feature of its
5 order monitoring program. Correct?

6 A. That was one component. Correct.

7 Q. And those thresholds were set at
8 300 percent of the customer's ordering history?

9 A. They were -- in what time frame?

10 Q. Well, for a majority of the time
11 frame.

12 A. So in the '90s, it was three for
13 I think ARCOS items and possibly a multiplier of
14 six for schedules -- nonreportables, so III, IVs
15 and Vs.

16 And then when we entered into our
17 program in '98, they were a lot more flexible.

18 But there was a baseline threshold trigger of
19 about three times the average of the pharmacy's
20 based upon what classification they were in.

21 Q. And what was the basis for using
22 that 300 percent?

23 MR. NICHOLAS: Object to the
24 form.

5 That was the number we used when we
6 started negotiating the new program with
7 DEA and worked with them for years.

13 Now, offices had the ability to
14 change that triggering number. And then
15 in 2007 we devised our program. One
16 more -- once again, when we were
17 designing the program, negotiating with
18 DEA again, the trigger point for
19 identifying an order of interest was
20 three -- was three times based on the
21 average of the category they were in, the
22 customer.

23 — — —

24 (Deposition Exhibit No. Zimmerman)

1 V2-4, Email chain, top one dated 30 Mar
2 2011, Bates stamped ABDCMDL00267230
3 through ABDCMDL00267232, was marked for
4 identification.)

5 - - -

6 BY MR. PIFKO:

7 Q. You remember when we talked
8 before, we were talking about the Chemical
9 Handlers Manual?

10 A. Yes. We talked about that.

11 Q. Do you remember discussing that?

12 A. Yes.

13 Q. Do you remember talking about how
14 the three times the multiplier was used because
15 of language in there?

16 A. That was part of the discussion
17 when we were negotiating with DEA of the three
18 times. At the time, that was the -- on the DEA's
19 website, identifying a potential suspicious order
20 for listed chemicals was three times. And that
21 was just another element of the discussions.

22 Q. I've handed you a three-page
23 email Bates labeled ABDCMDL00267230 through 32.
24 There's various discussion here, but I just

1 wanted to, again, direct your attention to a
2 couple specific statements that you have in here
3 about the thresholds.

4 A. (Reviewing document.)

5 Okay.

6 Q. All right. So you comment here
7 on the first page. In bullet point 2, you say,
8 "Threshold levels are already 300% over average."

9 Do you see that?

10 A. Yes.

11 Q. What did you mean by that?

12 A. The trigger for our program is
13 300 -- three times the average of the
14 classification of the pharmacy's -- so the
15 pharmacies are broken into categories. And that
16 category takes the average of all pharmacies, and
17 then the multiplier 3 is put on there to trigger
18 anywhere that hits that threshold.

19 Q. But the point that you're making
20 is that it's already 300 percent over. There's
21 already a lot of buffer in there. Agree?

22 MR. NICHOLAS: Object to the
23 form.

24 Go ahead.

13 BY MR. PIFKO:

14 Q. Well, let's look at a little
15 further down on the page. There's a section here
16 you say, "First: When an order is 'just 3% or
17 6%' over its threshold...it is actually 303...or
18 306% over...because we build a 300% float into
19 each threshold."

20 Do you see that part of the
21 email?

22 A. I see that, yes.

23 Q. The point is -- you're trying to
24 make there is. there's a lot of extra room in the

1 threshold. Agree?

2 MR. NICHOLAS: Object to the
3 form.

4 THE WITNESS: No.

5 BY MR. PIFKO:

6 Q. When something is over, it's not
7 just over a little bit, you're actually a lot
8 over the average.

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: They're over the
12 average. But again, it's customer
13 specific. That's just the triggering
14 event to then review the characteristics
15 of that order on top of that. But -- so
16 3 percent would be 303. Just as I state,
17 it's --

18 BY MR. PIFKO:

19 Q. It's actually 306 and 318. Your
20 math there is incorrect.

21 But the point you're trying to
22 make there is that when something is 1 percent
23 over or 2 percent over, it's not just 1 percent
24 over, it's actually 303 percent over. Agreed?

1 MR. NICHOLAS: Object. Object to
2 the predicate to the question and the
3 commentary on the math. And object to
4 the form.

5 THE WITNESS: That's the
6 statement. That's the statement I have.

7 BY MR. PIFKO:

8 Q. What are you trying to
9 communicate there when you say when an order is
10 just 3 or 6 percent over, it's actually 303 or
11 306 percent? What are you trying to communicate
12 by saying that?

13 MR. NICHOLAS: Object to the
14 form.

15 THE WITNESS: Exactly what I
16 state there. I mean, there's not much
17 commentary to expand on.

18 BY MR. PIFKO:

19 Q. That it's not a little bit over,
20 it's 303 or 306 percent over. Correct?

21 MR. NICHOLAS: Object to the
22 form.

23 THE WITNESS: Yeah. It's
24 3 percent over the threshold, but --

1 which is already established at three
2 times. Correct.

3 BY MR. PIFKO:

4 Q. Part of the reason that you have
5 that threshold is so that you won't interrupt the
6 customer's business. Correct?

7 A. It's the -- so the threshold has
8 been -- so the threshold was in place before we
9 blocked orders. So the threshold was always
10 3 percent, even when we weren't stopping orders.
11 So for the first 17 years, when the agreed-upon
12 practice with DEA was that you reported
13 suspicious after and we wanted you to report
14 anything over 300 -- three times the average of
15 that category, that was how it was done. There
16 was no impact to the customer, because it was
17 reported after the fact.

18 So the threshold trigger has
19 nothing to do with the impact of the -- on the
20 customer. That's always been the trigger,
21 regardless of whether we stopped orders or
22 released orders.

23 Q. So even in the time period when
24 you stopped the orders, it's your testimony that

1 the threshold has no design on not interrupting
2 the supply chain?

3 A. Well, again, the whole purpose of
4 the threshold was to provide some type of
5 triggering event, because we process the amount
6 of volume that goes through our system. And this
7 was the agreed-upon mechanism that we negotiated
8 with DEA as the triggering event. Of course,
9 patient care is -- we want to make sure that the
10 patients have product that they need when they
11 come in for their -- when they get a prescription
12 filled. So part of that is so you don't just
13 have a million orders flagging that aren't
14 suspicious or potentially suspicious.

15 Q. You agree that your customers are
16 valued business partners, is a statement that the
17 company makes from time to time?

18 MR. NICHOLAS: Object to the
19 form.

20 THE WITNESS: I mean, our
21 customers are business partners of ours,
22 yes.

23 BY MR. PIFKO:

24 Q. Are you familiar with what's

1 called sometimes chargeback data or fee for
2 services data?

3 A. I mean, I have heard of that.

4 I'm not intricately knowledgeable about that.

5 Q. Okay.

6 A. We have a department that handles
7 that type of stuff.

8 Q. Have you ever heard of 867 data
9 or 852 data? Do you know that term?

10 A. I know there's numbers to data,
11 but I don't -- I couldn't tell you if those were
12 the correct three numbers to -- I have heard
13 people reference data with -- accustomed to
14 numbers like that.

15 Q. You agree that AmerisourceBergen
16 provides transactional data back to the
17 manufacturers from whom it purchases products.

18 Correct?

19 MR. NICHOLAS: Object to the
20 form.

21 THE WITNESS: That's not my area,
22 and I -- you know, I don't know for sure.

23 BY MR. PIFKO:

24 Q. You've never discussed that with

1 anyone?

2 A. I can't recall having that
3 discussion with anyone.

4 Q. Okay. You have zero familiarity
5 with the use of chargeback data or 852 data or
6 867 data?

7 A. No.

8 Q. What about IQVA data or IMS data,
9 are you familiar with that type of data?

10 A. I know IMS is a data company
11 that -- is a data company that different
12 departments within the company uses.

13 Q. Have you ever used that data in
14 connection with your diversion control programs?

15 A. I believe we piloted something
16 years back, but I don't know the specifics of
17 that.

18 Q. What caused you to pilot that
19 data at some point in your history?

20 A. I think they were -- they had
21 mentioned that they have certain data that -- and
22 then we -- I believe. Again, I wasn't involved
23 with the pilot. I don't know if they piloted it
24 or what, but at some time we had access to

1 certain data the diversion control group piloted.

2 It was years back. I'm not sure when exactly.

3 Q. Who would have known about that?

4 A. David May.

5 Q. Do you have any understanding
6 about how that data was used in connection with
7 AmerisourceBergen's diversion control program?

8 A. I don't know exactly how it
9 was -- you know, I'm -- not exactly, no.

10 - - -

11 (Deposition Exhibit No. Zimmerman
12 V2-5, Email dated 17 Oct 2017, Bates
13 stamped ABDCMDL00272819, was marked for
14 identification.)

15 - - -

16 BY MR. PIFKO:

17 Q. Handing you what's marked as
18 Zimmerman Volume 2, Exhibit 5. For the record,
19 it's a single-page document Bates labeled
20 ABDCMDL00272819.

21 Let me know when you're done
22 looking at that.

23 A. (Reviewing document.)

24 Okay.

1 Q. Have you seen this before?

2 A. It has my name on it.

3 Q. Did you write this?

4 A. I would assume so.

5 Q. Do you remember writing this?

6 A. I don't remember writing it.

7 Q. This is about a 60 Minutes and
8 Washington Post article. Agree?

9 A. Yes.

10 Q. And you're writing some comments
11 to, as you say, address the article. Agree?

12 A. Yes.

13 Q. Why were you writing these
14 comments?

15 A. I don't know -- I don't recall
16 writing them, but -- I don't know. It looks like
17 notes to myself.

18 Q. Item 1 here you say, "DEA sets
19 quotas for the amount of opioids to be
20 manufactured each year and DEA raised quotas over
21 1000%" over "Joe R."

22 Do you see that?

23 A. Yes.

24 Q. Do you know who Joe R. referred

1 to here?

2 A. Joe Rannazzisi.

3 Q. What's the point you're trying to
4 make in item 1?

5 MR. NICHOLAS: Object to the
6 form.

7 THE WITNESS: Yeah. I'm not
8 trying to make any points. I'm just
9 making a note that DEA raised quotas over
10 1,000 percent. Schedule II products have
11 to have quotas, and DEA controls how much
12 opioids are manufactured each year to be
13 distributed.

14 BY MR. PIFKO:

15 Q. Do you know that the DEA
16 considers the prior year's disposal as part of
17 calculating the quota?

18 MR. NICHOLAS: Object to the
19 form.

20 THE WITNESS: I don't.

21 BY MR. PIFKO:

22 Q. Have you ever been in a meeting
23 with HDA or anybody discussing the quotas?

24 A. I don't recall.

1 Q. Have you ever discussed the
2 quotas with any of your manufacturer clients or
3 customers?

4 A. Not that I -- not that I know of.
5 We -- you know, as a distributor, we don't deal
6 with -- I mean, we're not involved in quotas.

7 Q. How about, have you ever heard of
8 getting an allocation of a manufacturer's quota
9 for distribution?

10 A. I'm not sure -- I know we get
11 allocated product on short supply items. I'm not
12 sure if that's what you're referencing.

13 Q. Have you ever like, for example,
14 applied to get a certain percentage of the
15 distribution of Schedule II controlled substances
16 manufactured by like Purdue?

17 A. I wouldn't know that.

18 Q. Who would know that?

19 A. If it's a purchasing or
20 procurement, then it would be that -- global
21 sourcing is the name of the department that does
22 all the buying for the company.

23 Q. Item number 2 here says, "DEA
24 issued registrations to pill mills that 'popped

1 up' (Joe R's words) without due diligence
2 enabling them to receive opioids from
3 distributors under Joe R's oversight."

4 Do you see that?

5 A. Yes.

6 Q. What are you trying to convey
7 here?

8 A. Again, these are just notes I had
9 written down based upon the 60 Minutes interview
10 with Joe Rannazzisi. And that was the statement
11 that he made, that he was referencing pill mills,
12 but he didn't indicate that the pill mills were
13 all vetted and approved and licensed in good
14 standing with DEA and the Boards of Pharmacy.

15 Q. Was it --

16 A. Go ahead. I'm sorry.

17 Q. Continue.

18 A. No.

19 Q. Was this something you were
20 writing because you intended to draft something
21 in response to the article?

22 A. No.

23 Q. Were you upset by the article in
24 the 60 Minutes story?

1 A. Was I upset? No, I wasn't upset.

2 I mean, I think the commentary -- you know,
3 mentioning pill mills, that there is -- that this
4 is a -- you know, these pills mills were popping
5 up. They weren't popping up. DEA was licensing
6 every one of these pill mills.

7 So here's the head of the DEA --
8 former DEA person blaming it on the pop up of the
9 pill mills that his department licensed that
10 enabled that to occur. And so, yeah, I get
11 frustrated, because we do what we're supposed to
12 do in the supply chain, and we're not an
13 enforcement agency, and the enforcement agency is
14 trying to blame it on the regulated wholesalers
15 when they're the ones who license these
16 pharmacies, they license these doctors, they
17 review all the information, they know every pill
18 that's sold. They have full enforcement
19 discretion. They can go into pharmacies, they
20 can raid pharmacies, they can go into doctors.
21 But instead, they're focusing on distributors
22 that have no line of sight to that, and then make
23 it sound that we're just selling to people that
24 aren't licensed, which is completely out of line.

1 We only sell to DEA licensed
2 pharmacies and hospitals. And we take our
3 responsibilities very seriously. So when I see a
4 guy on 60 Minutes who -- we negotiated our deal
5 with Joe Rannazzisi. He negotiated our program
6 and existence from 2007 forward. And here he is
7 making all these claims. He was in the room
8 across the table from me. He agreed on
9 everything that we put in place. Everything.

10 And then to have a 60 Minutes
11 article come out and kind of lambast what he
12 worked with us and negotiate is, yes,
13 frustrating. Yeah.

14 Q. So you feel that the DEA had
15 responsibility for the opioid crisis?

16 MR. NICHOLAS: Object to the
17 form.

1 They have all the distribution. They
2 know how many pills are going to each
3 pharmacy. They know how many pills are
4 going to what areas. They have full --
5 they have all that information.

6 Part of our deal in 2007 was to
7 report every single controlled substance
8 sale every day to DEA, which we did.
9 Full transparency. And that discussion
10 was in the event that we do find -- you
11 know, we know this is a new program and a
12 new area, so we want you to report every
13 order. And if we see something
14 suspicious, we'll call you. And then
15 we'll tweak it some more.

16 We never received a call. We
17 never received any other issues. And now
18 we have him on 60 Minutes saying that
19 we're servicing all these -- you know,
20 the distributors are servicing these pill
21 mills, it's just -- again, I think
22 there's a lot of blame to go around, but
23 I can tell you that if a doctor didn't
24 write the prescription, then we wouldn't

1 sell it to the pharmacy and, you know, it
2 wouldn't get into -- into the public.

3 BY MR. PIFKO:

4 Q. The fourth one here, you say, the
5 "opioid problem continuously got worse year over
6 year under Joe's...rule."

7 Do you see that?

8 A. I see that.

9 Q. Why did you think that was an
10 important note to make?

11 MR. NICHOLAS: Object to the
12 form.

13 THE WITNESS: Again, these are
14 just notes I was writing as he was --
15 as -- during the 60 Minutes. And he's,
16 you know, discussing the problem with
17 opioids. And he was in full control of
18 the DEA during that entire time.

19 Did he ever introduce legislation
20 or propose rules? He was in charge. Why
21 didn't he put proposed rules to further
22 regulate controlled substance
23 distribution? Why didn't he create a
24 special license for pain management so we

1 could focus on the issue and vet those,
2 more importantly, and then let DEA have
3 an idea for enforcement? There was --
4 why didn't he share the data that he was
5 receiving so distributors could make more
6 cognizant decisions based upon a full
7 volume of information versus just what
8 we're selling?

9 He was in charge of all that.
10 And during that time, we were trying to
11 open up a dialogue to how can we help to
12 the crisis, and we weren't getting any
13 communication. So that's -- that's, you
14 know, why I wrote that the problem
15 continued to occur while he was in
16 charge.

17 BY MR. PIFKO:

18 Q. You presided over
19 AmerisourceBergen's diversion control problem the
20 entire time as well. Correct?

21 A. We -- excuse me, can you state
22 that again?

23 Q. You presided over
24 AmerisourceBergen's diversion control program

1 during the entire time as well. Correct?

2 A. Yes.

3 Q. And the problem got worse under
4 your tenure as well. Correct?

5 MR. NICHOLAS: Object to the
6 form.

7 THE WITNESS: Again, not based
8 upon -- we were meeting all of our
9 regulatory requirements. We were going
10 to the Hill and proposing possible
11 solutions to open up and work with DEA.
12 We can't make new laws. We can't make
13 new registrations. We can't make
14 enforcement decisions. We don't issue
15 DEA licenses. DEA does all that. But
16 for some reason --

17 BY MR. PIFKO:

18 Q. You got your license --

19 MR. NICHOLAS: Don't interrupt
20 him.

21 THE WITNESS: But for some
22 reason, everyone expects the distributors
23 to be the enforcement agency, the
24 licensing agency. It's ridiculous. We

1 have a --

2 BY MR. PIFKO:

3 Q. You have your license

4 suspended --

5 MR. NICHOLAS: Don't interrupt

6 him.

7 THE WITNESS: We have a

8 distribution license, which the

9 regulations explain what our

10 responsibilities are. We meet our

11 responsibilities. I have been in charge

12 of it, yes, during that entire time, for

13 the last 30 years. And I take it very

14 seriously. And we do follow our

15 regulations, our responsibilities.

16 And when I think we can improve

17 it, I have done it in '98. I did it in

18 2007. I tried -- I have been trying

19 since 2007. I've been on the Hill for

20 the last ten years hoping to try to

21 improve our relationships with DEA, open

22 up conversations, how can we solve the

23 crisis.

24 I have offered solutions,

1 licensing requirements, clearinghouses,
2 everything. Zero. We've asked for
3 meetings. Zero. I can't force
4 regulations. And then I can't imply
5 those requirements onto our pharmacy
6 customers, who are licensed by DEA, who
7 have patients coming in. I can't say to
8 ABC, you know what, we're just going to
9 stop selling opioids. I can't do that,
10 because opioids are a legitimate
11 medication for the treatment of pain, and
12 there's patients that need them.

13 BY MR. PIFKO:

14 Q. You've been --

15 A. And so you guys -- again, you
16 want us to do everybody's job in the supply
17 channel. We are doing our job. We're also
18 offering solutions that we can control.

19 I can't control a doctor writing
20 prescription. I can't control a pharmacist who
21 fills the prescription. I control who we sell
22 to, to make sure that they're licensed and that
23 we vet them properly. And we could provide
24 training the best we can. But that's all I can

1 control.

2 I can't control the pharmacy, I
3 can't control the doctor, and I can't control
4 DEA.

5 Q. But you haven't been complying
6 with the law the entire time either. You got an
7 order to show cause. You got a consent agreement
8 with you.

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: But what -- so we
12 received an order to show cause.

13 BY MR. PIFKO:

14 Q. You're not complying with the
15 law. You're saying you're doing everything you
16 can. You could start by complying with the law.

17 Do you agree?

18 MR. NICHOLAS: Object to the
19 form.

20 THE WITNESS: I was -- we were
21 complying with the law.

22 BY MR. PIFKO:

23 Q. Why did the DEA send you an order
24 to show cause?

1 A. I can't control the DEA.

2 Q. Why was the US Attorney's Office
3 investigating you?

4 MR. NICHOLAS: I object to the
5 form.

6 THE WITNESS: I can't control
7 them either. I don't know. I know what
8 we do, and I know the rules and our
9 obligations under regulatory
10 requirements, and we uphold those.

11 - - -

12 (Deposition Exhibit No. Zimmerman
13 V2-6, Pay Change History, Bates stamped
14 ABDCMDL00383878, was marked for
15 identification.)

16 - - -

17 BY MR. PIFKO:

18 Q. I'm handing you what's marked as
19 Exhibit Zimmerman Volume 2, Exhibit 6.
20 ABDCMDL00383878.

21 This is your salary history from
22 2002, June 16, 2002 to October 28, 2018. Agree?

23 A. That's what it looks like, yes.

24 Q. And your salary is going up the

1 whole time. Agree?

2 A. Yes.

3 Q. It's nearly tripled from 2002 to
4 2018. Agree?

5 A. You indicate I'm not very good at
6 math, so I don't want to make a comment on that.

7 Q. Well, it was [REDACTED] in 2002, and
8 it's almost [REDACTED] in October 28, 2018. Agree?

9 A. Yes.

10 - - -

11 (Deposition Exhibit No. Zimmerman
12 V2-7, Map Chart, Bates stamped x through
13 x, was marked for identification.)

14 - - -

15 MR. NICHOLAS: Can we get a check
16 on the time while we're doing this?

17 THE VIDEOGRAPHER: Five minutes
18 left.

19 BY MR. PIFKO:

20 Q. I'm handing you what's marked as
21 Zimmerman Volume 2, Exhibit 7.

22 Is any part of your -- you're in
23 charge of diversion control. Right? You're the
24 top person at AmerisourceBergen responsible for

1 preventing diversion. Correct?

2 MR. NICHOLAS: Object to the
3 form.

4 THE WITNESS: I have a -- I
5 oversee the diversion control department.
6 Correct.

7 BY MR. PIFKO:

8 Q. And your salary is going up and
9 you're getting, we can look at these, merit
10 adjustments, merit adjustments, merit
11 adjustments.

12 Do you see them all over here?
13 Agree?

14 A. I'm going back to this one?

15 Q. Yeah.

16 A. Yes.

17 Q. Is any part of your salary based
18 on how well you're preventing diversion?

19 MR. NICHOLAS: Object to the
20 form.

21 THE WITNESS: I'm not sure.
22 Can you restate that?

23 BY MR. PIFKO:

24 Q. It's not, is it?

1 MR. NICHOLAS: Object it to that
2 form.

3 MR. PIFKO: There's no part of
4 your --

5 MR. NICHOLAS: He asked you
6 restate a question. You just said, "It's
7 not, is it?"

8 BY MR. PIFKO:

9 Q. There's no part of your salary
10 that is based on how well you're preventing
11 diversion.

12 MR. NICHOLAS: Object to the
13 form.

14 BY MR. PIFKO:

15 Q. Agree?

16 A. I would disagree.

17 Q. You have a component of your
18 salary that's --

19 A. My job is preventing diversion.
20 That's the basis of my department. If we were
21 selling to unlicensed locations that result in
22 diversion, then yes. If we had product that we
23 were -- that was flying out the back doors
24 because we didn't have adequate security, yes,

1 that would be my responsibility.

2 And we would -- and so we don't
3 have that happening. We don't sell to unlicensed
4 locations. We do report suspicious orders. We
5 meet all of our regulatory responsibilities. And
6 since we do, that's probably why I have gotten my
7 increases, because we haven't had those actions
8 taken against us in the 30 years I have been in
9 my role.

10 We take those seriously. I know
11 to you we don't. But I do. I take it
12 personally. I spent my entire career --

13 MR. NICHOLAS: Don't interrupt.

14 BY MR. PIFKO:

15 Q. You had an order to show cause --

16 MR. NICHOLAS: Don't interrupt.

17 MR. PIFKO: He's done.

18 BY MR. PIFKO:

19 Q. You had an order to show cause
20 issued against you in 2007, and you had to
21 negotiate a settlement agreement. In 2008, you
22 get a merit adjustment. Agree?

23 A. In 2007 we got an order to show
24 cause. And the first question I asked him, I

1 said, what is this about. And they said,
2 suspicious orders. And they said -- I said,
3 well, what about our approved system. They said,
4 what approved system. They weren't even aware
5 the DEA had approved our system.

6 So there was a big
7 miscommunication between DEA when that happened.
8 So we went to negotiate. There was never a -- we
9 didn't pay any fine. We negotiated to help with
10 a program that we felt might enhance what we had
11 existingly for the good of the -- for the good of
12 the distribution chain. And then they asked me
13 to --

14 Q. Let's look at --

15 A. Then they asked me to present at
16 their DEA conference, to share our program with
17 the other distributors. So if we're such bad
18 actors, why are they asking us to present at the
19 DEA conference about our programs?

20 Q. Let's talk about what's happening
21 to the country with respect to drug overdoses
22 while you're get merit bonuses and running the
23 diversion control program.

24 A. Right.

1 Q. Look at Exhibit 8. Do you
2 understand --

3 MR. NICHOLAS: How much time?

4 Two minutes? Okay.

5 BY MR. PIFKO:

6 Q. Do you understand how to read
7 this?

8 A. Is there a page you want me to --

9 Q. The blue. The blue is lower
10 death rates.

11 You understand, as you scroll
12 forward from 1990 to 2000, the overdose death
13 rates are skyrocketing in the United States.

14 MR. NICHOLAS: If you're going to
15 give him a document like this, you're
16 going to need to let him look at it.

17 THE WITNESS: Okay. I see it.

18 BY MR. PIFKO:

19 Q. Do you agree that that's what's
20 happening in the country?

21 A. That's what this map shows.

22 Q. And while you're responsible for
23 preventing diversion, this is what's happening.

24 A. I'm responsible --

1 MR. NICHOLAS: Let him finish.

2 THE WITNESS: I'm responsible for
3 diversion from my -- from our company.

4 Correct. I'm not responsible for
5 diversion from the pharmacy, from the
6 doctor, from the patient who has the
7 pills that he's been prescribed that he's
8 selling. We don't -- we can't prevent
9 that. We -- our role in the supply chain
10 is defined by the Code of Federal
11 Regulations, and we meet all those
12 requirements.

13 And since it's -- you showed me
14 this year over year, where's the new
15 regulations every year from the
16 government imposing new requirements to
17 combat this? Where are those? Why isn't
18 DEA calling me and having conversations
19 about, hey, we've got a severe problem,
20 can you help us fix it? Where is that?

21 BY MR. PIFKO:

22 Q. What are your improvements doing
23 to resolve --

24 A. I can't license them. I can't

1 create a new license. I've told them that that's
2 what we need. These are things we can do to
3 help, that the distributor can do, that can
4 control. If you license a pain clinic for -- to
5 dispense higher levels of opioids, then you could
6 put additional requirements on them. It
7 identifies the manufacturer and the distributor
8 that they sell more. If I have a retail pharmacy
9 that wants more, I can tell them go get the pain
10 license, it's going to cost you better -- it's
11 going to cost you some money and it's going to
12 cost you better education and more oversight by
13 DEA.

14 I can't control that, but it
15 seems like a simple fix to at least crack down on
16 some of this. But nothing. Nothing. The
17 government's done nothing.

18 Q. It's your testimony that --

19 MR. NICHOLAS: We're at an
20 hour-and-a-half. We're over --

21 MR. PIFKO: No. One more
22 question.

23 MR. NICHOLAS: No. I'm sorry,
24 Mark.

1 MR. PIFKO: I've got one more
2 question. I'm going to ask it.

3 MR. NICHOLAS: Mark --

4 MR. PIFKO: You've been talking.
5 Okay?

6 MR. NICHOLAS: Mark, I have not
7 been talking.

8 MR. PIFKO: I've got more
9 question. I'm going to ask it.

10 MR. NICHOLAS: You've been
11 badgering with him questions that are
12 unnecessary.

13 MR. PIFKO: I've got one more
14 question.

15 MR. NICHOLAS: Hold on.

16 MR. PIFKO: Let me ask my one
17 more question and we can be done.

18 BY MR. PIFKO:

19 Q. My question is, you think you've
20 done everything you can do to prevent diversion?

21 A. Yes. I think -- I think me and
22 my team have done everything we can to prevent
23 diversion, over and above going to congress,
24 meeting with people, trying to get additional

1 requirements imposed, regulations. We're waiting
2 for proposed rules, we keep hearing they're
3 coming out.

4 We want to be part of the
5 solution. But we can't do it one sided. You
6 need the collaboration of all stakeholders, and
7 you can't have it without the regulators and the
8 enforcement agencies and the people who license
9 these doctors and these pharmacies. We can't do
10 that. Alls we can do is make sure we have
11 patient -- medication available for those
12 patients when they need it and that -- those
13 pharmacies are properly licensed. And that's --
14 again, I think we do that.

15 MR. NICHOLAS: Okay. We're done.

16 Thank you.

17 THE VIDEOGRAPHER: This ends
18 today's deposition. We're going off the
19 record at 3:32 p.m.

20 (Witness excused.)

21 (Deposition concluded at
22 approximately 3:32 p.m.)

23

24

1

2 CERTIFICATE

3

4

5 I HEREBY CERTIFY that the witness
6 was duly sworn by me and that the deposition is a
7 true record of the testimony given by the
8 witness.

9

10 It was requested before
11 completion of the deposition that the witness,
12 CHRIS ZIMMERMAN, have the opportunity to read and
13 sign the deposition transcript.

14

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25 ANN MARIE MITCHELL, a Federally
26 Approved Certified Realtime
27 Reporter, Registered Diplomate
28 Reporter, Registered Merit Reporter and
29 Notary Public

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41 this transcript does not apply to any
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44 the certifying reporter.)

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2

3 Please read your deposition over

4 carefully and make any necessary corrections.

5 You should state the reason in the appropriate

6 space on the errata sheet for any corrections

7 that are made.

8 After doing so, please sign the

9 errata sheet and date it.

10

You are signing same subject to

11

It is imperative that you REview the REquest for RElease.

二十一

15 attorney within thirty (30) days of receipt of

16 the deposition transcript by you. If you fail

17 do so, the deposition transcript may be deemed to

18 be accurate and may be used in court.

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3

4 PAGE LINE CHANGE

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ACKNOWLEDGMENT OF DEPONENT

3

4 I, _____, do

5 hereby certify that I have read the foregoing
6 pages 1 - 117 and that the same is a correct

⁷ transcription of the answers given by me to the

⁸ questions therein propounded, except for the

9 corrections or changes in form or substance if

0 any noted in the attached Errata Sheet.

12

13

14 CHRISTOPHER ZIMMERMAN

DATE

15

16

17 Subscribed and sworn

to before me this

18

1.0 Mission statement

Notary Public

22

23

24